

Title	Emergency Protective Order (revise form 1295.90)
Summary	This proposal would revise the <i>Emergency Protective Order</i> to clarify the firearm prohibitions specified under California law and to incorporate other technical revisions.
Source	Criminal Law Advisory Committee, Family and Juvenile Law Advisory Committee
Staff	Tamara B. Abrams, 415-865-7712; Patrick O'Donnell, 415-865-7665; Joshua Weinstein, 415-865-7688
Discussion	<p>The <i>Emergency Protective Order</i> form is used by law enforcement to secure immediate court orders to protect adults and children at risk of abuse or other harm. Staff discovered that the firearm prohibition provisions on the form no longer comply with current state law.</p> <p>This proposal would bring the form into compliance with current state law by adding a notice that anyone subject to an Emergency Protective Order is prohibited from owning or possessing a firearm. Currently, the form only notes the prohibition on purchasing or receiving a firearm. Further, the proposal would clarify that the firearms prohibitions do not automatically apply when the order is issued in an elder or dependent adult abuse case.<sup>1</sup></p> <p>In addition, the proposal would (1) add an item number on page 1 of the form to more clearly indicate the location of the courthouse where the litigant can obtain more permanent court orders, (2) change the corresponding references to the courthouse item number where indicated on page 2 of the form, (3) highlight the location of the important notices, (4) add text to inform the restrained person that a criminal protective order takes precedence over any other conflicting court orders, and (5) change the form number from 1295.90 to EPO-1.</p> <p><i>Firearm prohibitions</i></p> <p><u>Covered Orders</u></p> <p>Under Family Code section 6250 et seq., a judicial officer may issue</p>

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<sup>1</sup> Senate Bill 226, if enacted, would revise current law by applying the firearms prohibitions to orders issued in elder or dependent adult abuse cases. If the bill is enacted, the corresponding proposed revision to the form would be eliminated.

an *Emergency Protective Order* when a law enforcement officer asserts reasonable grounds to believe that: (1) a person is in immediate and present danger of domestic violence, (2) a child is in immediate and present danger of abuse or abduction, (3) an elder or dependent adult is in immediate and present danger of abuse, or (4) a person is being subjected to stalking.

Persons subject to protective orders as defined in Family Code section 6218 are prohibited from owning, possessing, purchasing, or receiving firearms. Welfare and Institutions Code sections 304, 362.4, and 726.5(a) authorize a court to issue a protective order “as provided for in Section 213.5, or as described in Section 6218 of the Family Code.” The Judicial Council is specifically instructed to adopt forms for these restraining orders. Welfare and Institutions Code section 304 states that the orders shall not be confidential and shall be enforceable in the same manner as any other order issued pursuant to the Domestic Violence Prevention Act (division 10 commencing with section 6200 of the Family Code).

Emergency protective orders issued in cases involving stalking may include harassment protective orders under Code of Civil Procedure section 527.6 and workplace violence protective orders under section 527.8. (See Pen. Code, § 646.91(d)–(e).)

#### Excluded Orders

The firearms prohibitions are not found in Welfare and Institutions Code section 15657.03 relating to elder or dependent adult abuse. Thus, the proposal specifically excludes the firearm prohibitions from any *Emergency Protective Order* issued to protect an elder or dependent adult under the Welfare and Institutions Code.

#### Penal Code requirements

Penal Code section 12021 specifies the penalties for owning, possessing, purchasing, or receiving a firearm in violation of a protective order. However, the code specifies that the penalties only apply if they are specified in bold print on the order itself. (Pen. Code, § 12021(g)(3).) Hence, the appropriate firearms notices should be included on the emergency order.

#### *Court location*

The current form directs the protected person to seek a longer-term

restraining order at the court listed on page 1 of the order. However, there is no item number given for the court location paragraph. The proposal would add an item number 13 for the court location paragraph to make it more prominent. Subsequent items are renumbered accordingly.

*Highlight location of important notices*

The current form contains a notice at the bottom of the first page to alert the restrained person and others to important notices. This notice would be moved to a more prominent location, just beside the large “Emergency Protective Order” heading above item 9.

*Change “protective” to “restraining” where appropriate*

The form references the availability of longer-term orders. These orders are more accurately called “restraining orders” instead of “protective orders.” The proposal changes the references where appropriate.

*Delete references to the “opening” of the civil court*

In various places, the form directs the protected person to seek a longer-term restraining order from the court “when it opens.” However, the protective order can be issued any time of day. Therefore, the text “when it opens”, as it refers to the court, would be deleted and replaced by ‘from the court’.

*Criminal protective order takes precedence*

According to Penal Code section 136.2(h)(2), “[i]n those cases in which a complaint, information, or indictment charging a crime of domestic violence, as defined in Section 13700, has been issued, a restraining order or protective order against the defendant issued by the criminal court in that case has precedence in enforcement over any civil court order against the defendant.” The form would be revised to indicate that a protective order issued on form CR-160 “takes precedence in enforcement over any other conflicting court order.”

The proposed form is attached at pages 5-6.

## Attachments

## APPLICATION FOR EMERGENCY PROTECTIVE ORDER (CLETS)

EPO-1

(Name): \_\_\_\_\_ has provided the information in items 1-5.

LAW ENFORCEMENT CASE NUMBER:

1. PERSON(S) TO BE PROTECTED (insert names of all persons to be protected by this order):  
\_\_\_\_\_

2. PERSON TO BE RESTRAINED (name): \_\_\_\_\_

Sex: ☐ M ☐ F Ht.: \_\_\_\_\_ Wt.: \_\_\_\_\_ Hair color: \_\_\_\_\_ Eye color: \_\_\_\_\_ Race: \_\_\_\_\_ Age: \_\_\_\_\_ Date of birth: \_\_\_\_\_3. The events that cause the protected person to fear immediate and present danger of domestic violence, child abuse, child abduction, elder or dependent adult abuse, or stalking (including workplace violence or civil harassment) are (give facts and dates; specify weapons): \_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_4. ☐ The person to be protected lives with the person to be restrained and requests an order that the restrained person move out immediately from the address in item 9.5. a. ☐ The person to be protected has minor children in common with the person to be restrained, and a temporary custody order is requested because of the facts alleged in item 3. A custody order ☐ does ☐ does not exist.b. ☐ The person to be protected is a minor child in immediate danger of being abducted by the person to be restrained because of the facts alleged in item 3.6. ☐ A child welfare worker or probation officer has advised the undersigned that a juvenile court petition ☐ will be filed. ☐ will NOT be filed.7. ☐ Adult Protective Services has been notified.

8. Phone call to (name of judicial officer): \_\_\_\_\_ on (date): \_\_\_\_\_ at (time): \_\_\_\_\_

☐ The judicial officer granted the **Emergency Protective Order** that follows.By: \_\_\_\_\_  
(PRINT NAME OF LAW ENFORCEMENT OFFICER)

(SIGNATURE OF LAW ENFORCEMENT OFFICER)

Agency: \_\_\_\_\_ Telephone No.: \_\_\_\_\_ Badge No.: \_\_\_\_\_

**EMERGENCY PROTECTIVE ORDER** (See reverse for important notices)9. To restrained person (name): \_\_\_\_\_  
a. ☐ You must not contact, molest, harass, attack, strike, threaten, sexually assault, batter, telephone, send any messages to, follow, stalk, destroy any personal property, or disturb the peace of each person named in item 1.b. ☐ You must ☐ stay away at least \_\_\_\_\_ yards from each person named in item 1.  
☐ stay away at least \_\_\_\_\_ yards from ☐ move out immediately from

(address): \_\_\_\_\_

10. ☐ (Name): \_\_\_\_\_ is given temporary care and control of the following  
minor children of the parties (names and ages): \_\_\_\_\_  
\_\_\_\_\_

11. Reasonable grounds for the issuance of this order exist and an emergency protective order is necessary to prevent the occurrence or recurrence of domestic violence, child abuse, child abduction, elder or dependent adult abuse, or stalking (including workplace violence or civil harassment).

12. **THIS EMERGENCY PROTECTIVE ORDER WILL EXPIRE AT 5:00 P.M. ON:**13. To protected person: If you need protection for a longer period of time, you must request permanent **restraining** orders at (court name and address): \_\_\_\_\_INSERT DATE OF FIFTH COURT DAY OR SEVENTH  
CALENDAR DAY, WHICHEVER IS EARLIER;  
DO NOT COUNT DAY THE ORDER IS GRANTED**PROOF OF SERVICE**

14. Person served (name): \_\_\_\_\_

15. I personally delivered copies to the person served as follows: Date: \_\_\_\_\_ Time: \_\_\_\_\_  
Address: \_\_\_\_\_

16. At the time of service I was at least 18 years of age and not a party to this cause.

17. My name, address, and telephone number are (this does not have to be server's home telephone number or address):

(2) ☐☐ California sheriff or marshal

I declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct.

Date: \_\_\_\_\_  
(TYPE OR PRINT NAME OF SERVER) (SIGNATURE OF SERVER)

## EMERGENCY PROTECTIVE ORDER WARNINGS AND INFORMATION

**VIOLATION OF THIS ORDER IS A MISDEMEANOR PUNISHABLE BY A \$1,000 FINE, ONE YEAR IN JAIL, OR BOTH, OR MAY BE PUNISHABLE AS A FELONY. EXCEPT IN ELDER OR DEPENDENT ADULT ABUSE CASES, ANY PERSON SUBJECT TO A RESTRAINING ORDER IS PROHIBITED FROM OWNING, POSSESSING, PURCHASING OR ATTEMPTING TO PURCHASE OR OTHERWISE OBTAIN A FIREARM. SUCH CONDUCT IS SUBJECT TO A \$1,000 FINE AND IMPRISONMENT OR BOTH. THIS ORDER SHALL BE ENFORCED BY ALL LAW ENFORCEMENT OFFICERS IN THE STATE OF CALIFORNIA WHO ARE AWARE OF OR SHOWN A COPY OF THE ORDER. UNDER PENAL CODE SECTION 13710(b), "THE TERMS AND CONDITIONS OF THE PROTECTION ORDER REMAIN ENFORCEABLE, NOTWITHSTANDING THE ACTS OF THE PARTIES, AND MAY BE CHANGED ONLY BY ORDER OF THE COURT."**

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**To the restrained person:** This order will last until the date and time in item 12 on the reverse. The protected person may, however, obtain a more permanent restraining order from the court. You may seek the advice of an attorney as to any matter connected with this order. The attorney should be consulted promptly so that the attorney may assist you in responding to the order.

**A la persona bajo restricción judicial:** Esta orden durará hasta la fecha y hora indicadas en el punto 12 al dorso. La persona protegida puede, sin embargo, obtener una Orden de entredicho (restricción judicial) más permanente de la corte. Usted puede consultar a un abogado en conexión con cualquier asunto relacionado con esta orden. Debe consultar al abogado sin pérdida de tiempo para que él o ella le pueda ayudar a responder a la orden.

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**To the protected person:** This order will last only until the date and time noted in item 12 on the reverse. If you wish to seek continuing protection, you will have to apply for an order from the court at the address in item 13, or you should apply to the court in the county where you live if it is a different county and the violence is likely to occur there. You may apply for a protective order free of charge. In the case of an endangered child, you may also apply for a more permanent order at the address in item 13, or if there is a juvenile dependency action pending you may apply for a more permanent order under section 213.5 of the Welfare and Institutions Code. In the case of a child being abducted, you may apply for a *Child Custody Order* from the court at the address in item 13. You may seek the advice of an attorney as to any matter connected with your application for any future court orders. The attorney should be consulted promptly so that the attorney may assist you in making your application. You do not have to have an attorney to get the protective order.

**A la persona protegida:** Esta orden durará sólo hasta la fecha y hora indicadas en el punto 12 al dorso. Si usted desea que la protección continúe, tendrá que solicitar una orden de la corte en la dirección indicada en el artículo 13, o tendrá que hacer la solicitud ante la corte del condado donde usted vive, si se trata de un condado diferente y es probable que la violencia ocurra allí. La solicitud de la orden de protección es gratis. En el caso de que un niño o una niña se encuentre en peligro, puede solicitar una orden más permanente en la dirección indicada en el artículo 13 o, si hay una acción legal pendiente de tutela juvenil, puede solicitar una orden más permanente conforme a la sección 213.5 del código titulado en inglés **Welfare and Institutions Code**. En el caso del secuestro de un niño o una niña, usted puede solicitar de la corte una Orden para la guarda del niño o de la niña (*Child Custody Order*), en la dirección indicada en el artículo 13 de este formulario. Puede consultar a un abogado en conexión con cualquier asunto relacionado con las solicitudes de órdenes de la corte que usted presente en el futuro. Debe consultar un abogado sin pérdida de tiempo para que él o ella le pueda ayudar a presentar su solicitud. Para obtener la orden de protección no es necesario que un abogado le represente.

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**To law enforcement:** Penal Code section 13710(c) provides that, upon request, law enforcement shall serve the party to be restrained at the scene of a domestic violence incident or at any time the restrained party is in custody. The officer who requested the emergency protective order, while on duty, shall carry copies of the order. The emergency protective order shall be served upon the restrained party by the officer, if the restrained party can reasonably be located, and a copy shall be given to the protected party. A copy also shall be filed with the court as soon as practicable after issuance. The availability of an emergency protective order shall not be affected by the fact that the endangered person has vacated the household to avoid abuse. A law enforcement officer shall use every reasonable means to enforce an emergency protective order issued pursuant to this subdivision. A law enforcement officer acting pursuant to this subdivision shall not be held civilly or criminally liable if he or she has acted in good faith with regard thereto.

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**If a child is in danger of being abducted:** This order will last only until the date and time noted in the *Emergency Protective Order*. You may apply for a child custody order from the court.

**En el caso de peligro de secuestro de un niño o de una niña:** Esta orden será válida sólo hasta la hora y fecha indicadas en la Orden de protección de emergencia (*Emergency Protective Order*). Usted puede solicitar de la corte una Orden para la guarda del niño o de la niña (*Child Custody Order*).

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*This emergency protective order is effective when made. This order shall expire not later than the close of judicial business on the fifth day of judicial business or the seventh calendar day following the day of its issue. A criminal protective order issued on form CR-160 takes precedence in enforcement over any other conflicting court order.*